

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

MONDO POLYMER TECHNOLOGIES, INC., : CASE NO. 2:07CV1054
: Plaintiff, : JUDGE GREGORY L. FROST
: vs. :
: MONROEVILLE INDUSTRIAL MOLDINGS, :
: INC., :
: Defendant. :

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT OF NONINFRINGEMENT

Pursuant to Federal Rule of Civil Procedure 56, defendant Monroeville Industrial Moldings, Inc. (“Monroeville”) moves this Court for summary judgment of noninfringement of plaintiff Mondo Polymer Technologies, Inc.’s (“Mondo”) U.S. Design Patent No. 473,954 (“‘954 patent”).

This is a clear-cut summary judgment case of noninfringement. There are so many plain differences between the ‘954 patent and the accused P-block design that there is no way an ordinary observer would find them “substantially similar.” The seminal design patent case, *Egyptian Goddess, Inc. v. Swisa, Inc.*, 543 F.3d 665 (Fed. Cir. 2008), and its district court progeny unanimously have granted summary judgment of noninfringement in design patent cases with evidence closer than this one.

Mondo has not – and cannot – come forward with sufficient evidence showing a genuine issue of material fact to establish infringement. For example, Mondo’s sole technical expert witness refused to render an infringement opinion and merely opined the ‘954 patented design

and the accused P-block design were “similar enough” – far short of the “substantially similar” standard. Mondo’s lack of supporting evidence is fatal to its claim.

Monroeville therefore asks the Court to grant summary judgment in its favor. The bases for this motion are more fully set forth in Monroeville’s memorandum in support.

Respectfully submitted,

DATED: April 7, 2009

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CERTIFICATE OF SERVICE

This will certify that, on April 7, 2009, a copy of the foregoing Defendant's Motion for Summary Judgment of Noninfringement was served via the Court's ECF System on:

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